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March 26, 2003

Docket Management Facility (USCG-2001-8661) – 14
U.S. Department of Transportation, Room PL 401
400 Seventh Street, S.W.
Washington, DC20590-0001

2003 APR -1 P 2:22

DEPT OF TRANSPORTATION
DOCKETS

RE: Docket Number USCG-2001-8661
Notice of Proposed Rulemaking entitiled "Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions"

Dear Docket Clerk:

This purpose of this letter is submit a comment on the above-referenced action as outlined in the Federal Register, Volume 67, Number 198, Pages 63331 – 63352, dated October 11, 2002. While I reluctantly support the Coast Guard's selection of Alternative 5, I do have several comments regarding this selection. Most are minor in nature; however two major concerns are described below. All comments are described in the enclosed document.

As part of the Oil Pollution Act of 1990, spill response requirements were established in 1993, and were scheduled to increase by 25% twice – once in 2000, and again in 2003. Part of my support of the 1993 rulemaking was based on the fact that these increases would be required. The deletion of this required increase of response capability in 2003, while likely justified, does leave me with a feeling of being misled. I must ask myself if this promise of increased capability was simply to garner public support for the original regulation.

Secondly, I do agree that under specific circumstances dispersion is preferable to mechanical recovery. The issue I have with all of the Alternatives, including Alternative 5, is that is doesn't *require* mechanical recovery whenever it is deemed possible given prevailing sea conditions.

I would like to thank you for giving me the opportunity to comment on this proposed rulemaking and for extending the comment period to enable me to make this comment. If you have any questions or comments regarding the attached explanation of my comment, please do not hesitate to contact me at 610-304-2749.

Sincerely,

COPY

Michael R. Perry, CHMM, REM
8 Penn's Court
Morgantown, PA 19543

PROPOSED RULEMAKING

The U.S. Coast Guard (USCG) and the U.S. Department of Transportation (USDOT) published a notice of proposed rulemaking in the October 11, 2002 Federal Register. (67 FR 63331) An extension of the public comment period to April 8, 2003, was subsequently published in the November 19, 2002 Federal Register. (67 FR 69697) This proposed rulemaking, "Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions," is authorized under the Oil Pollution Act of 1990, and would change the requirements set forth in 33 CFR Parts 154 and 155. The USCG promulgated final response regulations in 1996. While this 1996 regulation contained minimum oil removal equipment requirements for transporting and transferring oil over waterways, it did require that these requirements be reviewed and upgraded in 2000 and again in 2003. The purpose of this regulation was to ensure, to a reasonable extent, that entities responsible for oil released into oceans and waterways would be capable of remediating the release within a reasonable period of time.

The current proposed rulemaking would require increased response capabilities for vessels and transportation-related facilities. "These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters." (67 FR 63331). The USCG reviewed five regulatory alternatives in its proposed rulemaking. Alternative 1 proposes no new action. The remaining four alternatives are on a continuum with Alternative 2 relying heavily on mechanical recovery and Alternative 5 relying on a balanced approach including mechanical recovery, dispersion, and *in situ* burning. All four of these alternatives require aerial tracking of releases. A cost-benefit analysis was also performed during the development of the alternatives. This analysis, "Regulatory Assessment for Changes to Vessel and Facility Response Plans; 2003 Response Requirements

for Mechanical Recovery, Dispersants, In Situ Burning, and Aerial Tracking, Report and Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking," was prepared in February 2002, by The Office of Standards Evaluation and Development, Standards Evaluation and Analysis Division, USCG Headquarters and USDOT, Research and Special Programs Administration, John A. Volpe National Transportation Systems Center, Technology Applications and Deployment Division. Net Present Value Cost Effectiveness published in this cost-benefit analysis ranged from $17,700 per barrel of oil recovered for Alternative 2 to $10,000 per barrel of oil recovered for Alternative 5. The dollar amounts are based on a 7% discount rate, with an assessment period of 2001-2030. The $10,000 per barrel remediated figure presented in the cost-benefit analysis does not reflect the great up-front costs for materials and labor. These costs are presented in The Office of Standards Evaluation and Development report. The magnitude of the impact of these costs is presented by Thomas J. Sween of Marine Industrial Services, Inc. (Thomas J. Sween, Marine Industrial Services, Inc., Letter to Document Management Facility, January 10, 2003). According to Mr. Sween, these costs will eliminate his company from release response. I suggest that federal loans or grants be made available for companies like Marine Industrial Services, Inc. in order to assist them in meeting initial costs for complying with the proposed regulation.

The USCG has proposed adopting Alternative 5. Of the alternatives offered, I agree that the USCG has made the appropriate selection. Alternative 5 requires no increase in mechanical recovery capability. It does require new application capabilities for dispersants based on release location (Inland, Near shore, Off shore, Open ocean) and required response time (Tiers 1 – 3). Credits are offered to off-set mechanical recovery for *in situ* burning where it is pre-approved or there is an expedited pre-approval agreement. *In situ* burning would reduce required mechanical recovery capability by 20%. Aerial tracking of releases

would be required by Alternative 5. The aerial tracking requirement is the same for all alternatives other than "no action."

The community impacted by these regulations, and the proposed rulemaking, includes, but is not limited to, owners/operators of tank vessels and maritime transportation-related facilities, the contractors providing response services, parties using the open ocean and shorelines for commerce and recreation, and federal/state/local governments, as well as foreign governments.

COMMENT TO PROPOSED RULEMAKING

The USCG has selected Alternative 5 to address revised response plan requirements for tank vessels and maritime transportation-related facilities. This alternative requires:

- No increase in mechanical recovery capability over 2000 requirements;
- New application capabilities for dispersants;
- Credit for in situ burning; and,
- Aerial tracking of releases.

Mechanical recovery capabilities are determined by response time and release area; however, requirements are identical for each release area (Inland, Near shore, Off shore, Open ocean). Tier 1 response requires a mechanical recovery capability of 12,500 barrels per day. Tier 3 response requires a mechanical recovery capability of 50,000 barrels per day. The Florida Department of Environmental Protection favors Alternative 4, which requires a 25% increase in mechanical recovery capability for inland areas of water, but does not object to the USCG's selection of alternative 5 (Sally B. Mann, Florida Department of Environmental Protection, Letter to Docket Management Facility, December 12, 2002). According to Michael Slack of Southern Towing Company, the amount of recovery equipment already in place to respond to a worst-case release was already deemed sufficient in 1993. As the number of releases and the average

severity of each release is less than in 1993, additional mechanical recovery capability is not necessary (Michael Slack, Southern Towing Company, Letter to Docket Management Facility, December 17, 2002). I agree with the USCG that additional mechanical recovery capability should not be required. However, prior regulation stated that mechanical recovery capability would be increased by 25% in 2003. I suggest that the USCG document that the current equipment requirement constitutes a 25% increase in response capability based on total release quantities as compared from 1993 to 2003. Secondly, I suggest that the regulation specifically state that mechanical recovery must be used in any release response in which it is deemed likely to succeed.

The new requirements for dispersant application clearly define the required Effective Daily Application Capability, e.g. for Tier 1(B) in Gulf Coast areas – 12 hours for completed application of 4,000 gallons of dispersants for 1,900 barrels of released oil. While I agree with the new dispersant requirements, there appear to be several logistical issues left unresolved. According to Robin Rorick of the American Petroleum Institute, there is no defined mechanism to verify an owner/operators ability to pull together all of the dispersant application components in time to comply with the regulation. Additionally, it isn't clear if the response time begins at the time of the release or at the time dispersant use is deemed appropriate (Robin Rorick, American Petroleum Institute, Letter to Document Management Facility, December 13, 2002). The proposed rulemaking also limits dispersant application by aircraft to 50% of the Effective Daily Application Capability. The efficiency of aircraft dispersant systems is greater than that of vessel systems. Vessels systems are not a fully developed technology at this time (Rorick, 2002). I suggest that the USCG specifically define the methods it will use to determine compliance with dispersant availability and capabilities. I also suggest that the USCG re-evaluate the restrictions on dispersant application by aircraft.

The proposed rulemaking has no requirements for *in situ* burning. Credit against required mechanical recovery equipment is offered for *in situ* burning capabilities in pre-approved or there is an expedited pre-approval agreement. I don't agree that *in situ* burning should be approved unless there is absolutely no alternative response action available. There are several impacts from *in situ* burning described by the National Oceanic and Atmospheric Administration (http://response.restoration.noaa.gov, dated December 29, 2000, accessed March 23, 2002). These impacts include:

- Generation of large quantities of highly visible smoke that may adversely affect exposed populations downwind;
- Burn residues may sink, making it harder to recover product and prevent the potential exposure of bottom dwelling organisms;
- Plant and animal deaths and other adverse biological impacts may result from localized temperature elevations at the sea surface; and,
- The long term effects of burn residues on exposed populations of marine organisms have not been investigated.

Research conducted by David Evans, et. al. of the National Institute of Standards and Technology (NIST) has determined a conservative downwind distance of 10 kilometers as the safe distance for human populations from *in situ* burning (David D. Evans, George W. Mulholland, Howard R. Baum, William D. Walton, and Kevin B. McGratten, *In Situ Burning of Oil Spills*, Journal of Research of the National Institute of Standards and Technology, Volume 106, Number 1, pages 231-278, dated January-February 2001). However, based on cost, $200,000 per 1,000 foot boom with 5 booms required for Tier 3 requirements, it is unlikely that most small-business responders could afford the technology and the low level of credit offered make it unlikely that the cost can justify the investment (The Office of Standards Evaluation and Development, 2002). Since use of *in situ* burning is unlikely to become an industry-accepted response option and due to the potential environmental damage associated with this practice (NOAA, 2000), I suggest that *in situ* burning be removed from the response options available to owner/operators under the proposed rulemaking.

The fourth requirement in the proposed rulemaking is aerial tracking of releases. According to the proposed rulemaking initial aerial surveillance of the release must begin within three hours of the release, with continued availability for three ten-hour periods for the first 72 hours after the release. The observer must be separate from the pilot, must be in continuous communication with ground command and on-water responders, and must be trained in specific ASTM and NOAA assessment techniques. The proposed rule is not clear on aerial tracking requirements beyond 50 nautical miles from the coastline (Rorick, 2002). I agree with the requirement for aerial surveillance of releases. There are two issues with this part of the regulation. The first is the capability of responders to get aerial surveillance to the release location within three hours. I suggest that military, federal, or state agencies provide initial surveillance with the cost charged back to the owner/operator of the release. This would relieve responders from having an aircraft, pilot and observer on continuous standby, and would significantly reduce the cost associated with the part of the regulation. The second issue is the requirement for the observer to be separate from the pilot. I suggest that it is possible for the pilot to be trained in the required assessment techniques, saving the cost of a second person.

SUMMARY OF COMMENT

I agree that additional requirements for release response by owners/operators of tank vessels and maritime transportation-related facilities requirements are justified. I further agree that Alternative 5 is the best choice among the five presented alternatives. However, I do have several suggestions for changes to the proposed rulemaking. Descriptions of the suggested changes are fully described in the body of this document.

- Federal loans or grants should be made available to small and medium-sized companies to assist them in meeting initial costs for complying with the proposed rulemaking.
- The USCG should document that the current equipment requirement constitutes a 25% increase in response capability based on total release quantities as compared from 1993 to 2003.
- The proposed rulemaking should specifically state that mechanical recovery must be used in any release response in which it is deemed likely to succeed.
- The USCG should specifically define the methods it will use to determine compliance with dispersant availability and capabilities.
- The USCG should re-evaluate the restrictions on dispersant application by aircraft.
- *In situ* burning should be removed from the response options available to owner/operators under the proposed rulemaking.
- Military, federal, or state agencies provide initial surveillance with the cost charged back to the owner/operator of the release.
- The aerial surveillance pilot should be trained in the required assessment techniques, saving the cost of a second person.

REFERENCES

Federal Register, Volume 67, Number 198, Department of Transportation, Coast Guard, 33 CFR Parts 154 and 155, Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, pages 63331-63352, 11 October 2002.

Federal Register, Volume 67, Number 223, Department of Transportation, Coast Guard, 33 CFR Parts 154 and 155, Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, pages 69697-69698, 19 November 2002.

Office of Standards Evaluation and Development, Standards Evaluation and Analysis Division, U.S. Coast Guard Headquarters and U.S. Department of Transportation, Research and Special Programs Administration, John A. Volpe National Transportation Systems Center, Technology Applications and Deployment Division, "Regulatory Assessment for Changes to Vessel and Facility Response Plans; 2003 Response Requirements for Mechanical Recovery, Dispersants, In Situ Burning, and Aerial Tracking, Report and Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking," February 2002.

Letter from Thomas J. Sween, President, Marine Industrial Services, Inc. to Docket Management Facility, U.S. Department of Transportation, concerning Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, 10 January 2003.

Bricker, Mark L., "Oil Pollution Act," Academy of Certified Hazardous Material Managers, *Hazardous Materials Management Desk Reference*, Doye B. Cox, editor, 2000.

Federal Register, Volume 61, Number 9, Part II, Department of Transportation, Coast Guard, 33 CFR Part 155, Vessel Response Plans; Final Rule, pages 1051-1108, 12 January 1996.

Federal Register, Volume 61, Number 9, Part III, Department of Transportation, Coast Guard, 33 CFR Parts 150 and 154, Response Plans for Marine Transportation-Related Facilities; Final Rule, pages 7890-7939, 15 February 1996.

Letter from Sally B. Mann, Director, office of Intergovernmental Affairs, Florida Department of Environmental Protection to Docket Management Facility, U.S. Department of Transportation, concerning Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, 12 December 2002.

Letter from Martin Slack, Safety/Training Manager, Southern Towing Company, to Docket Management Facility, U.S. Department of Transportation, concerning Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, 17 December 2002.

Letter from Robin Rorick, Regulatory Analyst, American Petroleum Institute to Docket Management Facility, U.S. Department of Transportation, concerning Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, 13 December 2002.

National Oceanic and Atmospheric Administration web site (http://response.restoration.noaa.gov, dated December 29, 2000, accessed March 23, 2002.

David D. Evans, George W. Mulholland, Howard R. Baum, William D. Walton, and Kevin B. McGratten, *In Situ Burning of Oil Spills*, Journal of Research of the National Institute of Standards and Technology, Volume 106, Number 1, pages 231-278, dated January-February 2001.